Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1319

JOSEPH D. SMITH,
CLAYTON L. HUMMEL,
*Petitioners,*

*vs.*

STATE OF INDIANA,
*Respondent.*

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF INDIANA

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### OPINION BELOW

The opinion of the Court of Appeals of Indiana, First District, is reported in 363 N.E. 2d 227.

### JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3), and to have this Court review a decision issued by the Indiana Court of Appeals. Respondent would assert that this Court has no jurisdiction under that statute since the Petitioner did not

raise any federal question or issue in the Courts below and only asserted those issues on petition to this Court.

## QUESTION PRESENTED

1. Whether, notwithstanding an implied consent statute which provides that, when a law enforcement officer has probable cause to believe a person has been driving under the influence of intoxicating liquor, he shall not arrest such person on such charge until he has offered such person an opportunity to take a chemical test for intoxication and providing that, if such person shall refuse to submit to such test or submits and is found thereby to be intoxicated, such person may at a preliminary hearing for such purpose have his driving license suspended for one year and that if such officer did not have probable cause to believe that such person had been driving under the influence of intoxicating liquor or that the officer did not comply with the statute, his license shall be returned to him and the Court shall then proceed with arraignment on the charge, such officer may nevertheless, without compliance with the implied consent statute, arrest such person on a charge of causing the death of another by driving while driving under the influence of intoxicating liquor, under another statute authorizing such arrest when such officer has probable cause to believe such person guilty of such offense.

2. Whether the extraction of a blood sample from the body of one suspected of driving under the influence of liquor without compliance with an implied consent statute, constituted unreasonable search and seizure, notwithstanding the consent of such person to such extraction.

3. Whether the arrest of one upon a warrant issued pursuant to a probable cause hearing at which evidence of



blood samples obtained by unreasonable search and seizure was presented together with other evidence sufficient to establish probable cause was an unreasonable seizure of the person of such person under the Fourth Amendment to the Constitution of the United States.

4. Whether warrants for the arrest of persons suspected of driving under the influence of intoxicating liquor issued pursuant to probable cause affidavits set out in the Petition herein were invalid under the Fourth Amendment to the Constitution of the United States.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the Constitution of the United States provides:

> *Unreasonable searches and seizures.*—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the Constitution of the United States provides in part:

> § 1. *Citizenship—Due process of law—Equal protection.*—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

The Indiana statutes involved herein are as follows:

IC 9-4-1-54(b)(1) "(b) *Operating or driving while under the influence of intoxicating liquor or narcotic or other drugs.*—Any person who operates or drives a vehicle while that person is under the influence of intoxicating liquor or unlawfully under the influence of narcotics or other habit forming or dangerous depressant or stimulant drugs shall be guilty of a criminal offense.

(1) Any person who while under the influence of intoxicating liquor or unlawfully under the influence of narcotic or other habit forming or dangerous, depressant or stimulant drugs operates or drives a vehicle and when so operating or driving causes the death of another person, is guilty of a felony and, upon conviction, shall be imprisoned for a determinate period of not less than one [1] year nor more than five [5] years; or shall be imprisoned for a determinate period of not less than one [1] year nor more than two [2] years to which shall be added a fine of not less than two hundred fifty dollars [$250] nor more than five thousand dollars [$5,000]. Upon conviction, the court shall recommend the suspension of the current driving license of the person so convicted for a period of one [1] year and the commissioner of motor vehicles shall comply with the recommendations, and should the court fail to make the mandatory recommendation, or should the court fail to make the appropriate mandatory recommendation, the commissioner shall proceed to act in the matter as if such recommendation had been made by the court. During the three [3] years following the termination of the suspension, the commissioner may not issue a license to that person unless that person provides and maintains proof of financial responsibility in force pursuant to IC 9-2-1 [9-2-1-1—9-2-1-45]."

IC 9-4-1-134. "*Arrest for violations.*—A peace officer may, without a warrant, arrest a person, in



case of violations of section 39[9-4-1-40] of this act and section 52(b) [subsection (b) of 9-4-1-54] of this act if the violation of said section 52(b) [subsection (b) of 9-4-1-54] is coupled with accident which in fact has been committed, though not in his presence, when he has reasonable cause to believe that the violation was committed by such person. The procedure prescribed herein shall not be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade."

IC 9-4-4.5-3. "*Opportunity to submit to chemical test prior to arrest.*—Any law enforcement officer authorized to enforce the laws of this state regulating the use and operation of vehicles on public highways who has probable cause to believe that any person has committed the offense of driving or being in actual physical control of a vehicle while under the influence, in his presence or view, or who has *probable cause to believe that any person who has been involved in a motor vehicle accident has commited such offense, though not in his presence or view, shall not place such person under arrest for such offense until he has first offered to such person the opportunity to submit to a chemical test for intoxication* to be administered by a person certified as a valid chemical test operator by the department of toxicology of the Indiana University school of medicine. Any such person who agrees to submit to such chemical test for intoxication shall not be arrested for driving while under the influence, but shall accompany the officer to the nearest available chemical test device for the purpose of taking such test as a condition of the driving privilege, (a) If such chemical test results in prima facie evidence that such person is not under the influence, he shall not be arrested and charged with such offense and he shall be released immediately." (Emphasis supplied.)

IC 9-4-4.5-4. *"Refusal to submit—Judicial hearing prior to arraignment—Matters to be determined —Findings.*—When a certification of refusal to submit to a chemical test is submitted to the court, it shall hold a separate hearing on the matter of the test refusal, prior to the arraignment on the criminal charge, for the determination of the following matters:

"(a) Did the law enforcement officer have probable cause to believe that the accused had committed the offense of driving or being in actual physical control of a vehicle while under the influence? . . .

"(b) Did the law enforcement officer offer to the accused the opportunity to submit to a chemical test for intoxication before placing the accused under arrest for such offense, and was the accused physically and mentally able to provide a breath sample? . . .

"(c) The defendant shall be entitled to reasonable written notice of the separate hearing and shall have the right to attend the hearing in person, with or without legal counsel, and to present evidence. The defendant shall also be entitled to examine or cross-examine a witness who presents evidence at the separate hearing. After the issues in (a) and (b) above are determined, the court shall then determine whether or not the accused did in fact refuse to submit to a chemical test for intoxication.

"If the court finds that a refusal to submit to a chemical test for intoxication was because of mental or physical incapacity not related to intoxication, such refusal and the reasons therefor shall be reported to the commissioner of motor vehicles for such action as shall be deemed proper by him on the form provided by the commissioner. If the court finds that the mental or physical incapacity would affect the driving ability of the accused, it



shall forward such finding to the commissioner of motor vehicles along with the current driving license of the accused, otherwise, the driving license shall be returned to the accused.

"If the court finds that such refusal was made wilfully and knowingly or because of the state of intoxication of the accused, it shall forward such finding to the commissioner of motor vehicles on a form to be provided by the commissioner, along with the current driving license of the accused, and it shall recommend to the commissioner that the driving privileges of the accused remain suspended for a period of one [1] year from the date of said finding, and the commissioner shall comply with said recommendation.

*"If the court finds that the accused did not refuse to submit to a chemical test for intoxication or if the court finds that the law enforcement officer did not properly proceed under this chapter, no further action shall be taken under this chapter [9-4-4.5-1—9-4-4.5-6], and the court shall proceed with the arraignment, unless the finding includes one of lack of probable cause,* in which case the charge of driving or being in actual physical control of a vehicle while under the influence shall be quashed upon the motion of the court." (Emphasis supplied.)

## STATEMENT OF THE CASE

On September 20, 1974, in the case of the Petitioner Joseph D. Smith, a police officer executed and presented an affidavit of probable cause for issuance of an arrest warrant for said Petitioner, which affidavit, omitting caption, signature, and jurat reads as follows:

> "The undersigned, being first duly sworn upon his oath, deposes and says: "That he is a police officer for the City of Decatur, and did have occasion on the 12th day of September, 1974, to investigate an

accident in the City of Decatur, wherein, the undersigned did determine from various witnesses and in the said investigation that the above named Defendant was driving an automobile and did pass a certain car on the right leaving the travelled portion of the roadway and did come back on said highway, and cross the center-line and crash into a car driven by Mark Allan Woodard, as a result of which accident the said Mark Allan Woodard did thereafter die.

"The undersigned further states that he did smell alcohol upon the breath of the above named Defendant and did procure a blood sample from said Defendant and said sample has subsequently revealed an alcoholic content in excess of the legal presumption of an intoxicated person under the Statute as charged herein.

"WHEREFORE the undersigned prays that upon hearing held the Court issue a warrant for the arrest of the Defendant herein as charged in the Information filed herewith."

On September 26, 1974, in the case of Petitioner Clayton L. Hummel, a police officer executed and presented an affidavit of probable cause for issuance of a warrant for the arrest of said Petitioner, which affidavit, omitting caption, signature, and jurat reads as follows:

> "The undersigned, being first duly sworn upon his oath, deposes and says: "That he is a police officer for the Indiana State Police and did have occasion on the 16th day of September, 1974, to investigate an accident in Adams County, Indiana, wherein the undersigned did determine from various witnesses in said investigation that the above named Defendant was driving an automobile and did crash into the rear of a certain horse drawn buggy as alleged in the Affidavit filed herewith, as a result of which accident two persons, namely, Jonas E. Hilty and Pete E. Hilty, then and there died.



> "The undersigned further states that he did smell alcohol upon the breath of the above named Defendant at the scene of said accident and did procure a blood sample from said Defendant and said sample has subsequently revealed alcoholic content in excess of the legal [p]resumption of an intoxicated person under the Statute as charged herein.
>
> "WHEREFORE, the undersigned prays upon hearing held, the Court issue a warrant forthwith for the arrest of the Defendant herein."

On September 20, 1974, the State of Indiana filed an information in the Adams Circuit Court, Adams County, Indiana, charging the Petitioner, Joseph D. Smith, with causing the death of Mark Allen Woodard by operating a motor vehicle while under the influence of intoxicating liquor. On September 27, 1974, the State of Indiana filed an information in the Adams Circuit Court charging the Petitioner, Clayton L. Hummel, with causing the deaths of Jonas E. Hilty and Pete E. Hilty by operating a motor vehicle while under the influence of intoxicating liquor.

On December 9, 1974, both Petitioners filed motions to dismiss their respective cases on the grounds that the respective actions were untimely brought and that the trial court did not have jurisdiction of the respective defendants. No federal constitutional issues were raised at this time. On January 3 and 10, 1975, the Adams Circuit Court held an evidentiary hearing on these motions, and on February 27, 1975, granted both motions, holding among other things that:

1. I.C. 9-4-4.5-1—9-4-4.5-6 superseded in part I.C. 9-4-1-134.

2. The State's affidavits of probable cause for the arrest of the defendants were insufficient.

3. The respective arrests of the defendants were illegal and, therefore, the trial court had no jurisdiction of the

respective causes; and the defendants were entitled to have the respective informations against them dismissed.

4. The officers executing the probable cause affidavits did not have probable cause to believe the respective defendants had committed the offense of operating a motor vehicle while under the influence of intoxicating liquor prior to taking blood tests and such blood tests were taken illegally.

The State of Indiana appealed this action of the trial court to the Court of Appeals of Indiana. The Court of Appeals consolidated the two appeals, and on May 26, 1977, reversed the Adams Circuit Court with an opinion reported at 363 N.E. 2d 277, holding that I.C. 9-4-1-134 was not superseded in part by I.C. 9-4-4.5-3 and that the probable cause affidavits were sufficient to allow a neutral magistrate to determine that probable cause existed for the issuance of warrants for the arrest of the Petitioners. Petitioners filed a petition for rehearing, which was denied July 11, 1977. Petitioners then filed a petition for transfer of the appeal to the Supreme Court of Indiana, which petition was denied by that Court on December 20, 1977. The Petitioners then filed their petition for writ of certiorari in this Court attempting to raise the federal constitutional issue for the first time.

No determination of the guilt or innocence of Petitioners has been made. The decision of the Court of Appeals of Indiana merely reversed the dismissal of the Adams Circuit Court and the causes are back in that court for trial on their merits.

The facts involved in the two cases are as follows:

James Rich lived at Geneva in Adams County, Indiana, and was employed at the International Harvester Company. On September 12, 1974, he got off work and at about



eleven o'clock at night was driving southward on Road 27 approaching the city of Decatur. A car approached him from the rear, passed him on the right, going into the ditch to do so, cut in front of him, and crossed to the left side of the road, striking a northbound car. After striking the northbound car, the car spun around and came back toward Rich, forcing him to go into the right-hand ditch to avoid being struck. (Tr. pp. 217-219).

Rich stopped the car, got out, and went to the car that had passed him. The left front door was standing open and there was no one in the front seat. He then went to the other vehicle and saw Mark Allen Woodard pinned under the steering wheel. He saw some people coming out of a house near the highway, went over, and asked them to call the police and an ambulance. He then returned to the car that had passed him and found Joseph D. Smith, Petitioner herein, sitting in the back seat (Tr. pp. 219-221).

Sergeant Kenneth B. Jennings, of the Decatur Police Department, arrived at the scene at 11:34 P.M. He saw Joseph D. Smith still in his car and detected the strong odor of alcohol on his breath. There were five beer cans in and near the car and one of them had been opened. He discussed the accident with James Rich. Ambulances arrived and took both drivers to the hospital. Officer Robert Noack, of the Decatur Police Department, went to the hospital and obtained a sample of Smith's blood for analysis for alcohol content. He also smelled alcohol on Defendant's breath. (Tr. pp. 182-192, 265-268).

Shortly before midnight on September 16, 1974, Mr. and Mrs Hilty, and their twin babies, Jonas U. and Pete E. Hilty, were driving their horse and buggy southward on Road 27, approaching the city of Berne, Indiana. The buggy had two lights, numerous reflectors and an orange

triangle, the official symbol designating a slow-moving vehicle. (Tr. pp. 247-310).

At the same time, the Petitioner Clayton L. Hummel was driving his automobile, approaching the buggy from the rear, at a speed of at least seventy miles per hour. He applied his brakes, skidding fifty-four feet before striking the buggy and continuing to skid for a total skid of 279 feet and two inches. (Tr. pp. 198, 202, 268, 266, 279).

Trooper William Kuhn of the Indiana State Police was in Berne when a radio call concerning the collision was received and hurried to the scene. He found Petitioner Clayton L. Hummel lying on the berm near his car, bleeding from his nose and a cut on his forehead. He placed a bandage on the cut, noticing as he did so a strong odor of alcohol on Hummel's breath. Going to Mr. Hilty he learned that Hilty's two sons had been with him. When he located the two boys, he found them to be dead. Turning to Hummel, he observed him on his feet, walking unsteadily, hesitantly, and in a wavering line. He asked him if there had been anyone else with him and he replied that there had not, speaking with thick speech. He also noticed that Defendant had bloodshot eyes. From the length of the skid marks he estimated Hummel's speed to have been at least seventy miles per hour (Tr. pp. 191-194, 275-284).

Ambulances arrived and the injured were taken to the hospital (Tr. pp. 195, 205, 210, 212, 214, 297, 311, 312). Sgt. Kenneth Jennings, of the Decatur Police Department, was asked to go to the hospital and obtain a blood sample from both drivers. He arrived at the hospital just as Hummel was brought in. He informed the nurse on duty in the emergency room of the police's desire for a blood sample. The nurse went to Hummel and said, "We need



a blood sample for the police. May we take one?" (Tr. pp. 313-335).

Hummel replied, "It is all right." (Tr. p. 316).

The nurse drew the sample, placed it in a small bottle, labeled it, and handed it to Sgt. Jennings (Tr. p. 316).

## ARGUMENT

### I.

### NOTWITHSTANDING INDIANA'S IMPLIED CONSENT STATUTE, A LAW ENFORCEMENT OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE THAT A PERSON HAS CAUSED THE DEATH OF ANOTHER BY DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR MAY, WITHOUT COMPLIANCE WITH THE IMPLIED CONSENT STATUTE, ARREST SUCH PERSON ON SUCH CHARGE.

Petitioners acknowledge that they did not raise the constitutional question attempted to be presented herein in their briefs in the Court of Appeals of Indiana and acknowledge the general rule that the Supreme Court of the United States will not consider questions not raised by the record brought before it and which were not considered by the courts below, but ask that an exception to such rule be made. They state that assertions of such questions in the Indiana Court would have been "at most an improper assertion of abstract of hypothetical questions." It is difficult to comprehend how any thing more can be presented in their Petition to this Court.

The decision of the Court of Appeals of Indiana does no more than to decide that Petitioners must stand trial in the Adams Circuit Court on the charges against them. It made no decision as to the merits of such charges nor as to what evidence would be admissible against them.

Petitioner cites *Anderson v. United States,* 417 U.S. 211 (1974), as supporting the existence of exceptions to the above rule, but that case does not so hold and no question of exceptions to the general rule was involved in it. They also cite *Youakim v. Miller,* 425 U.S. 231 (1976). That case originated, not in a State Court, but in a Federal District Court and stated the exception to the general rule as follows:

> "Its usual formulation is that 'it is only in exceptional cases *coming here from the federal courts* that questions not pressed or passed upon are reviewed.' " (Emphasis added)

Under that case Petitioners are clearly excluded from the exception to the general rule and this case is not subject to review by this Court at this time.

Petitioners cited *Klebs v. State* (1974), — Ind. App. —, 305 N.E. 2d 781, in support of their first issue. In that case the application of the Implied Consent Law to arrests under I.C. 9-4-1-134 was not an issue and was not decided. The State's only contention was that it had complied with the Implied Consent Law. Although the Court held that the breathalyser test was not admissible in evidence, it did not dismiss the charge, but affirmed the conviction because of the showing in the record of other sufficient evidence of the appellant's intoxication. *Jones v. State* (1974), — Ind. App. —, 315 N.E. 2d 403, also cited by petitioner is likewise not authority for Petitioners' contention. The police in *Jones* attempted to comply with the Implied Consent Law, but the State failed to prove that the device used had been inspected and approved by the Department of Toxicology. No question was raised as the application of the Implied Consent Statute to arrests under I.C. 9-4-1-134.



Petitioners cite *Rose v. State* (1976), — Ind. App. —, 345 N.E. 2d 257. In that case there was no question involving the Implied Consent Law. The appellant did not contend that the police had not complied with the statute. Appellant's only contention was that he had not been driving, but the Court of Appeals held that being found alone in the car in a traffic lane with the motor running was sufficient evidence of violation of the statute and affirmed his convictions.

This appears to be the first appeal involving the application of the Implied Consent Law to arrests under I.C. 9-4-1-134. I.C. 9-4-4.5-6 of the *Implied Consent Statute* contains the provision:

> "No chemical test for intoxication shall be considered as evidence *for the purpose of this chapter* if it is not performed by a person certified as a valid operator by the state department of toxicology of the Indiana University School of Medicine." (Emphasis added).

The statute strictly limits the restriction on use of the test as evidence to "the purpose of the chapter", *i.e.* the Implied Consent Law. This limitation of application is further emphasized by I.C. 9-4-4.5-4 of the Implied Consent Law, which contains the provision:

> "If the court finds that the accused did not refuse to submit to a chemical test for intoxication or if the court finds that the law enforcement officer did not properly proceed under this chapter, no further action shall be taken under this chapter, *and the court shall proceed with the arraignment,* unless the finding includes one of lack of probable cause, in which case the charge of driving or being in actual physical control of a vehicle while under the influence shall be quashed upon the motion of the court." (Emphasis added).

Petitioners exaggerate the significance of the statement by the Court in *Jones* that the Implied Consent Law and I.C. 9-4-1-54(b) are in *pari materia.* The phrase means no more than that the two statutes are not in conflict and the later one does not repeal or supersede the prior one. *State v. Gerhardt* (1896), 145 Ind. 439, 44 N.E. 469. That condition of the statutes here concerned is secured by the phrases in sections 9-4-4.5-4 and 9-4-4.5-6 of the Implied Consent Law limiting it to "the purposes of this chapter".

The question of the application of the Implied Consent Law to arrests under I.C. 9-4-1-134 does not appear to have been decided before. *Klebs, Jones,* and *Rose* were not decided by the highest court in the State of Indiana, but by the Court of Appeals and there appears to have been no petition to transfer in any of them. In the case at bar, the Court of Appeals of Indiana has decided:

> "The failure of an arresting officer to accord the individual arrested an opportunity to be chemically tested for the presence of alcohol in his blood in no way affects the validity of his arrest. The only effect of the arresting officer's failure to provide the arrestee with the chemical test provided for in the Implied Consent Statute would be the person arrested could not have his driver's license suspended for a period of one year prior to trial.
>
> • • •
>
> "Therefore, since the probable cause affidavits were not used for the purpose of implementing the mandates of the Implied Consent Statute, i.e. the revocation of driving privileges for a period of one year, the trial court erred in not considering the results of the blood tests for the reasons argued by Hummel and Smith."

The denial by the Supreme Court of Indiana of Petitioners' petition for transfer affirms the decision of the Court of



Appeals and the above holdings are now the law of the State of Indiana.

The Court of Appeals also held that Hummel waived all objections to the blood test by consenting to it and that blood was illegally extracted from Smith, but that the probable cause affidavit contained sufficient evidence without the blood test to permit the issuance of the arrest warrant. By the judgment of the Court of Appeals the cases against Hummel and Smith go back to the Adams Circuit Court to be tried on their merits. No decision has been made as to whether the blood tests will be admissible at the trial.

## II.

## THE EXTRACTION OF A BLOOD SAMPLE FROM THE BODY OF ONE SUSPECTED OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR, WITHOUT COMPLIANCE WITH INDIANA'S IMPLIED CONSENT LAW, DID NOT CONSTITUTE UNREASONABLE SEARCH AND SEIZURE NOTWITHSTANDING THE CONSENT OF SUCH PERSON TO SUCH EXTRACTION.

The Court of Appeals of Indiana held, that although compliance with the Implied Consent Statute in the extraction of the blood samples was not necessary, the extraction of a sample from Smith was an illegal search and seizure because it was not taken as an incident to a lawful arrest. The extraction of a sample from Hummel was legal, solely because he consented to it.

The hospital nurse approached Hummel and said, "We need a blood sample for the police. May we take one?" Hummel replied, "It is all right." (Tr. pp. 313-316).

Petitioners argue that Hummel's consent was limited to a blood sample under the Implied Consent Statute. It was not so stated.

### III.

### THE ARREST OF PETITIONERS HEREIN ON WARRANTS ISSUED PURSUANT TO A PROBABLE CAUSE HEARING AT WHICH BLOOD TESTS WERE CONSIDERED WAS NOT AN UNREASONABLE SEIZURE OF THEIR PERSONS UNDER THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Petitioners characterized the averments of the probable cause affidavits as conclusions, but such is not the case except in the sense that all human thought is conclusions, either perceptual or logical. While the averments contain hearsay, it was hearsay communicated to the officers by eye-witnesses of the two accidents and such hearsay is competent to show probable cause for arrest. The fact that the informants of the police officers were eye-witnesses of the accidents was itself evidence of their credibility. It is not required that officers run a life history on their informants before crediting their information. Reasonable cause has been properly based upon radio messages or telephone calls. *Caine v. State* (1975), — Ind. App. —, 324 N.E. 2d 525; *Landrum v. State* (1975), — Ind. App. —, 338 N.E. 2d 666; *Manson v. State* (1967), 249 Ind. 53, 229 N.E. 2d 801. *cert den.* 88 S. Ct. 1198.

### IV.

### PETITIONERS' PETITION PRESENTS NOTHING FOR REVIEW.

As we have shown above, the warrants for Petitioners' arrests were issued on probable cause established by sufficient affidavits. However, even if their arrests could be regarded as invalid, such fact would not entitle them to have the informants against them dismissed. The invalidity of their arrests would entitle them to discharge from custody, but not to the dismissal of the information against them, which would continue pending until Petitioners were brought to court by valid arrests, subject of course to dismissal for want of prosecution if the State delayed unduly to obtain such arrests. *State ex rel. French v. Hendricks Superior Court* (1969), 252 Ind. 213, 247 N.E. 2d 519.



### CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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